

CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES  
OF WILD FAUNA AND FLORA



Eighteenth meeting of the Plants Committee  
Buenos Aires (Argentina), 17-21 March 2009

Annotations

CLARIFICATION OF THE EXEMPTION FOR FLASKED SEEDLINGS OF APPENDIX-I ORCHIDS

1. This document has been submitted by the United States of America\*.
2. The listing of Orchidaceae in Appendix I is annotated as follows:

*For all of the following Appendix-I species, seedling or tissue cultures obtained in vitro, in solid or liquid media, transported in sterile containers are not subject to the provisions of the Convention.*

3. Based on available documentation and consultations with the Secretariat, we have determined that this annotation follows from a proposal submitted by Australia and adopted through postal procedures during the intersessional period between the eighth and ninth meetings of the Conference of the Parties [CoP8 (Kyoto, 1992) and CoP9 (Ft. Lauderdale, 1994)], and a subsequent proposal from Germany to modify the annotation at CoP9. The genesis of this annotation lies in document Doc. 8.27 (prepared for CoP8), in which the production of orchid seedlings in sterile flasks was described as a process for which "wild-collected fruits of orchids are virtually never used" because of the need to monitor and harvest them at the appropriate time to harvest the seeds from the seedpods under sterile conditions. For this reason, it was argued that control of international trade in flaked seedlings of orchids is not relevant to the protection of these species in the wild.
4. In parallel during the same time frame, various resolutions on the regulation of plant trade have also reflected deliberations by the Conference of the Parties on the exemption of flaked seedlings of Appendix-I orchids. At CoP8, the Conference of the Parties adopted Resolution Conf. 8.17, which included the following:

*...flaked seedlings of orchid species listed in Appendix I shall be interpreted as being exempted from CITES control, taking into account the provisions of Article VII, paragraph 4, and Article I, paragraph (b) (iii), and the recommendations of Resolution Conf. 6.18, and agreeing to a derogation from Resolution Conf. 5.9 for this exemption.*

5. This paragraph was retained with some modifications through various iterations of the Resolution adopted at CoP9 (Fort Lauderdale, 1994), CoP10 (Harare, 1997) and CoP11 (Gigiri, 2000). At the 12th meeting of the Plants Committee (PC12; Leiden, 2002), it was decided to again recommend to the Conference of the Parties that the Plants Committee should review the resolution on plant trade for possible amendments, to clear up ambiguities in the text. At CoP12 (Santiago, 2002), Decision 12.11 *inter alia* directed the Plants Committee to "review the Resolutions concerning plants and the plants trade to improve their clarity..."

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\* The geographical designations employed in this document do not imply the expression of any opinion whatsoever on the part of the CITES Secretariat or the United Nations Environment Programme concerning the legal status of any country, territory, or area, or concerning the delimitation of its frontiers or boundaries. The responsibility for the contents of the document rests exclusively with its author.

6. A working group, established at PC13 (Geneva, 2003), reviewed Resolution Conf. 11.11, including the paragraph on flaked seedlings of Appendix-I orchids. This review resulted in recommendations to the Conference of the Parties from the Plants Committee, presented at CoP13 (Bangkok, 2004) in document CoP13 Doc. 51, which stated:

*The exemption for flaked seedlings of Appendix-I orchids has been revised to make it clear that the exemption only applies if the specimens meet the definition of 'artificially propagated', and to define more clearly the type of specimens involved.*

7. The suggested revision was intended to clarify the phrase from the original Resolution, "*taking into account the provisions of Article VII, paragraph 4,*" which alludes to the treatment of artificially propagated specimens of Appendix-I species as if they are specimens of an Appendix-II species. Appendix-I species may only be afforded this treatment if they meet the strict definition of 'artificially propagated,' which includes the requirement that parental stock must have been obtained legally and without detriment to the survival of the species in the wild. The Plants Committee had already discussed at PC11 (Langkawi, 2001) the problem of newly discovered Appendix-I orchid species, particularly those in the genus *Paphiopedilum*, which had been entering trade as flaked seedlings produced in non-range countries, but for which parental stock was not known to have been legally exported from range countries (see PC11 Doc. 24.4).
8. As a result of the recommendations by the Plants Committee, amendments were adopted at CoP13, which currently appear in Resolution Conf. 11.11 (Rev. CoP14), *Regulation of trade in plants*, as follows:

***Regarding flaked seedlings of Appendix-I orchids***

*RECOMMENDS that flaked seedlings of orchid species included in Appendix I obtained in vitro, in solid or liquid media, and transported in sterile containers, be interpreted as being exempt from CITES control only if they have been artificially propagated in accordance with the definition provided above, taking into account the provisions of Article VII, paragraph 4, and Article I, paragraph (b) (iii), and agreeing to a derogation from Resolution Conf. 9.6 (Rev.) for this exemption;*

9. The United States is seeking the guidance of the Plants Committee on the advisability of submitting a proposal to CoP15 to amend the annotation to the listing of Appendix-I orchids so that it is consistent with the recommendation in Resolution Conf. 11.11 (Rev. CoP14) regarding the exemption of flaked seedlings of Appendix-I orchids. The current situation, with the difference in wording between the annotation and the Resolution, allows for confusion and inconsistency in the implementation of the Convention for these species, and we believe this undermines efforts to conserve these species in the wild. Clear language is needed in the annotation to indicate that the exemption applies only if the specimens contained in a flask meet the strict definition of 'artificially propagated' that has been agreed by the Conference of the Parties. In practice, this would not mean that such flasks would require CITES documents to be traded, but enforcement officials would have a clearer basis for taking action when abuses of the exemption occur.